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November 22, 2021

**VIA ECF**

Hon. Andrew L. Carter, Jr.  
United States District Court  
Southern District of New York  
40 Foley Square, Room 435  
New York, NY 10007

Re: *Commodities & Minerals Enterprise Ltd. v. CVG  
Ferrominera Orinoco, C.A.*, No. 16-cv-861

Dear Judge Carter:

We submit this joint letter on behalf of Plaintiff Commodities & Minerals Enterprise Ltd. (“CME”) and Defendant CVG Ferrominera Orinoco, C.A. (“FMO” and, together with CME, the “Parties”) in response to Your Honor’s October 22, 2021 Order directing the Parties to submit a joint status report to the Court.

As noted in our June 23, 2020 status report, on September 18, 2019, the Court issued an Opinion and Order lifting the stay and directing that approximately \$7.8 million held by FMO in an account with Bank of America, N.A. (“BANA”) be transferred to an escrow account at Signature Bank in New York. *See* Doc. 122 (the “Turnover Order”).

CME subsequently sent a letter to BANA’s counsel enclosing the Turnover Order, and inquired when the funds at issue might be transferred. BANA’s counsel informed CME that, on October 23, 2019, BANA had applied with the Office of Foreign Assets Control (“OFAC”) with a license authorizing the unblocking of FMO’s funds held at BANA.

CME and BANA continue to be in regular contact concerning the status of BANA’s application with OFAC. BANA’s counsel has informed CME that it has periodically reached out to OFAC to inquire as to the status of its application, but that OFAC has not yet issued a decision. As such, the funds at issue remain at BANA.<sup>1</sup>

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<sup>1</sup> We note that, under the escrow agreement entered into between FMO and CME (which, pursuant to a Partial Final Award dated May 2, 2018, was declared effective and in force by the Society of Maritime Arbitrators panel in the arbitration concerning the Transfer System Management Contract dated August 7, 2010 (the “TSMC Arbitration”)),

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In the meantime, as Your Honor is aware, on December 19, 2019, CME filed a related summary proceeding before this Court seeking to confirm, recognize, and enforce the final award issued in CME's arbitration against FMO before the Society of Maritime Arbitrators ("SMA"), which awarded CME \$12,655,594.36 plus post-award interest arising from FMO's breach of the M/V General Piar Charter Party dated January 21, 2010. *See* No. 19-cv-11654, Docs. 1-7. That petition was confirmed by this Court on December 10, 2020, *see* No. 19-cv-11654, Doc. 45, and the matter is on appeal to the Second Circuit, where oral argument has been proposed by the Court for the week of January 31, 2022.

Respectfully submitted,

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any funds held in escrow at Signature Bank may only be released to CME once the panel's final arbitration award in the TSMC Arbitration is confirmed and such confirmation has been affirmed on appeal (or the time to appeal has elapsed). CME originally filed a petition to confirm the award issued in the TSMC Arbitration in the U.S. District Court for the Southern District of Florida on December 19, 2019, in proceedings bearing case number 19-cv-25217, which was confirmed on September 23, 2020. Following FMO's September 30, 2020 motion to vacate the confirmed award, the Court ruled that service was ineffective on July 8, 2021. CME thereafter filed an amended petition to confirm on July 19, 2021, and the parties agreed that service was effective. CME's amended petition to confirm was fully briefed on October 15, 2021 and remains pending.